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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

RIGOBERTO CABRERA, Plaintiff and Appellant, v. ERT CORPORATION et al., Defendants and Respondents.	B173420 (Los Angeles County Super. Ct. No. KC036458)

APPEAL from a judgment of the Superior Court of Los Angeles County, R. Bruce Minto, Judge. Affirmed.

Daniels, Fine, Israel & Schonbuch and John P. Daniels for Plaintiff and Appellant.

Maxie, Rheinheimer, Stephens & Vrevich and Darin L. Wessel for Defendants and Respondents.

This is an appeal from a stipulated judgment entered to facilitate appellate review of the trial court's decision in the first phase of a bifurcated trial of a personal injury action. Appellant Rigoberto Cabrera (Cabrera) was injured in a multi-vehicle accident on March 13, 2001, and sued respondent ERT Corporation dba Sonora Trucking (ERT) and its driver Oliver Ely Morris, who was involved in the accident. The parties stipulated to bifurcate the trial to decide first whether Cabrera was insured on the day of the accident. If he was not insured, then he cannot recover noneconomic damages under Civil Code[1] section 3333.4, which was enacted in 1996 as part of Proposition 213, to limit automobile insurance claims by uninsured motorists. (See *Hodges v. Superior Court* (1999) 21 Cal.4th 109, 115.) After a two-day bench trial held on July 28 and July 30, 2003, the court found Cabrera was not insured on the date of the accident and was barred from recovering noneconomic damages. Appellant seeks reversal of that judgment before he proceeds to trial for the recovery of economic damages. We affirm.

DISCUSSION

Civil Code Section 3333.4 Bars Recovery of Noneconomic Damages by the Operator of a Vehicle Involved In an Accident If the Operator Cannot Establish His Financial Responsibility As Required by the Financial Responsibility Laws

Civil Code section 3333.4 provides in pertinent part: "[I]n any action to recover damages arising out of the operation or use of a motor vehicle, a person shall not recover non-economic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages if any of the following applies: [¶] . . . [¶] (3) The injured person was the operator of a vehicle involved in the accident and the operator cannot establish his or her financial responsibility as required by the financial responsibility laws of this state." The Financial Responsibility Law is codified in Division 7 of the California Vehicle Code, sections 16000 et seq. and, among

[1] All further statutory references are to the Civil Code unless otherwise indicated.

other things, requires that all drivers be able to prove their financial responsibility, ordinarily, with proof of liability insurance.

The "primary aim" of section 3333.4 is "to limit *automobile insurance claims* by uninsured motorists. The electorate wanted to ensure that uninsured motorists, who contribute nothing to the insurance pool, would be restricted in what they receive from it." (*Hodges v. Superior Court, supra*, 21 Cal.4th at p. 115.) "[T]he measure was intended to punish and deter scofflaws, i.e., drivers who do not obey the financial responsibility laws." (*Id.* at p. 117.)

Here, Cabrera cannot recover general damages unless he can prove that he was an insured driver of the vehicle he was driving *at the time of the accident*. (§ 3333.4, Veh. Code, §§ 16020, subd. (a), 16021, subd. (b), 16054, subds. (a)(1) & (2); see *Allen v. Sully-Miller Contracting Co.* (2002) 28 Cal.4th 222, 227 [action fell "squarely within the terms of section 3333.4" where injured driver "did not have liability insurance . . . at the time of the accident"].)

We deny respondent's request to take judicial notice of ballot materials accompanying Proposition 213. We do not find the language of section 3333.4 to be ambiguous with respect to the particular factual dispute before us. Plainly, section 3333.4 was intended to preclude the recovery of noneconomic damages by drivers who are not insured at the time of an accident, whether or not they obtain insurance afterward, and we do not need to resort to legislative history to make that determination.

Standard of Review

The only question before the trial court was whether Cabrera was barred from seeking recovery of general damages because he was uninsured at the time of the accident. If he could demonstrate that he was an insured driver on the date of the accident, then he was entitled to seek general damages. If he could not prove he was an insured driver on the date of the accident, then section 3333.4 bars his recovery of general damages. The trial court found Cabrera was not an insured driver, and he had no

basis for a good faith belief that he was an insured driver, and therefore, section 3333.4 bars recovery of general damages.

We review the court's decision for substantial evidence. "The substantial evidence rule measures the quantum of proof adduced at a hearing and assesses whether the matters at issue have been established by a solid, reasonable and credible showing. '"Substantial evidence" must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with "any" evidence. It must be reasonable in nature, credible, and of solid value; it must actually be "substantial" proof of the essentials which the law requires in a particular case.' [Citations.] But the substantial evidence rule 'does not require that the evidence appear to the appellate court to outweigh the contrary showing.' [Citation.]" (*Department of Parks & Recreation v. State Personnel Bd.* (1991) 233 Cal.App.3d 813, 830-831.)

There Is Substantial Evidence to Support the Judgment

The following facts are not in dispute. Cabrera's wife, Maria Cabrera (Maria) met with an insurance broker, Luis Farjeat (Farjeat), to apply for insurance for a 1998 Toyota on February 22, 2000. She expressly excluded her husband from coverage. Farjeat testified that Maria explained her husband did not have a license or he had a poor driving history. The policy issued on February 22, 2000, and excluded Cabrera from coverage.

When Maria bought the policy, Cabrera was driving a 1989 Nissan without any insurance. The 1989 Nissan was registered in Maria's name. Cabrera's license was suspended when he bought the Nissan in September 1999. Cabrera drove the Nissan without a license between September 1999 and July 2000, when it was reinstated. He drove the Nissan without insurance all year in 2000. He had previously received a ticket for driving without liability insurance.

On March 6, 2000, Maria deleted her 1998 Toyota from coverage and added a 2000 Toyota. There were no changes to the insured drivers, and Cabrera thus remained excluded from coverage. Almost a year later, in February 2001, Maria added the 1989 Nissan to her policy.

The parties dispute whether Maria also added Cabrera as an insured person under the policy in February 2001. She testified that she did, and that Cabrera had been driving the 1989 Nissan, and she did not intend to drive it. Respondents offered contradicting evidence. Farjeat testified that when Maria visited him in his office on February 3, 2001, to add the 1989 Nissan to the policy, she also asked about adding Cabrera to the policy. Farjeat quoted a price to add Cabrera to the policy, but she declined because it was too high. Maria denied asking how much it would cost to add Cabrera to the policy and that Farjeat had quoted a price to add Cabrera.

Maria signed a policy change request form on February 3, 2001, which stated, "Please add the 89 Nissan to the policy [of] liability. Thank you." In addition, two confirmations of endorsement for the February 2001 change request were admitted into evidence, one printed on February 6, 2001, and the other printed on April 20, 2001, both of which list Cabrera as an excluded driver. The one printed on February 6, 2001, states the reason for the endorsement was "ADD A VEHICLE."[2]

Respondents offered evidence that Maria first asked to add Cabrera as an insured on May 17, 2001, two months *after* the accident. It was undisputed that Maria met with Farjeat on May 17, 2001. Farjeat testified that she brought her husband's driver's license with her and asked to add Cabrera as an insured.[3] Farjeat testified that to add Cabrera to the policy, he had to run his driving record, and he first did that on May 17, 2001.

Farjeat also testified that Maria explained to him when they met on May 17, 2001, that her lawyer advised her to add her husband to the policy. Farjeat told Maria that adding her husband would not cover the accident because he was excluded at the time of the accident. Farjeat testified that Maria insisted on adding Cabrera, although she also

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[2] The other confirmation of endorsement sets forth as the reason for the endorsement "CR DR CLS," and no testimony was offered as to the meaning of those letters.

[3] Maria initially admitted that she took her husband's driver's license with her to the broker's office on May 17, 2001, and when asked why she did that if she believed he was added to the policy in February, she claimed she was confused and that she brought the license with her to the February meeting.

removed the 1989 Nissan from the policy. Maria testified that the only reason for her meeting with Farjeat on May 17, 2001, was to remove the Nissan, because her husband was disabled and could not drive in his condition. But she did not explain why, if that were the case, she did not exclude Cabrera from the policy (which one might expect her to do if she believed he was covered).

In addition, respondents offered evidence that Maria signed a policy change request form on May 17, 2001, to "delete 89 Nissan and add the second driver," after completing the questions "Driver Information, Driver 2" with Cabrera's driving record, social security number, and other personal information. The confirmation of endorsement stated the reason for the May 17, 2001, endorsement was "DEL 89 NISS AND 2ND DRIVER." Maria argues this is evidence that she deleted *both* the Nissan *and* her husband from coverage on May 17, 2001. Respondent argues, in effect, the word "and" on the confirmation of endorsement was a typographical error since the policy change request form that Maria signed stated her intent to delete the Nissan and "add" a second driver.

Appellants offered evidence that respondent's claims adjuster wrote a letter on May 22, 2003, two years after the accident, stating in part that if it "were presented with a claim as a result of the loss on 3-13-01 we would have provided the driver, Rigoberto Cabrera, with California minimum limits liability coverage." The representative of the claims adjuster who wrote the letter testified that he based his coverage conclusion on a declarations page printed on February 12, 2001, which did not list Cabrera as an excluded driver and on a memo note dated February 9, 2001, in the underwriting file stating, "ADD DRIVER. DOR 01/23, FAXED 2/1 – AGENT EXCEEDED BINDING. DDF."[4]

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[4] The May 22, 2003, letter was admitted to show the state of mind of the claims adjuster and the insurer, and as a prior consistent statement of the opinion of the claims adjuster and the insurer that they would have provided coverage if a claim had been submitted. The opinion and state of mind of the claims adjuster and insurer two years after the accident are irrelevant to the question whether Cabrera in fact had liability insurance on the date of the accident.

Respondents point out that there were declarations pages dated both before and after the February 12, 2001, declarations page which *did* identify Cabrera as an excluded driver, and the memo note referred to some request made January 23, 2001, more than a week before Maria claimed to have added Cabrera to the policy. (Respondent's underwriter testified that the letters "DOR" in the note meant "date of request.") There was no evidence of any request having been faxed to the adjuster's files on or about February 1, 2001, and respondent's underwriter testified that a coverage request had to be received within 72 hours in order to be honored, and if it was not, it would "exceed binding."

Appellant contends that the May 22, 2003, letter expressing the opinion of the claims adjuster that coverage would have been provided if Cabrera had submitted a claim is such a powerful admission of liability that it annihilates all the contrary evidence that Cabrera was not insured on the date of the accident. The fact that, two years after the accident, the claims adjuster wrote a letter saying it would have paid Cabrera's claim is not irrefutable proof that Cabrera had insurance. At best, it creates an inference that Cabrera had insurance. But the insurance policy and endorsements and other documents signed by Maria, together with the testimony of the witnesses, determine the rather straightforward question whether Cabrera was in fact insured at the time of the accident. It was manifestly reasonable for the trial court to conclude that he was not.

Moreover, the trial court concluded that neither Cabrera nor Maria believed, or had good cause to believe, that Cabrera was insured at the time of the accident. We find substantial evidence supports the trial court's conclusion, and that appellant, "who deliberately and knowingly violated traffic-related laws . . . , is exactly the type of person the electorate intended to bar from recovering noneconomic damages." (See *Honsickle v. Superior Court* (1999) 69 Cal.App.4th 756, 766.)

DISPOSITION

The judgment is affirmed.

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GRIMES, J.*

We concur:

HASTINGS, Acting P.J.

CURRY, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.